IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MS JUSTICE G.ROHINI
WRIT PETITION NO : 16898 of 2004

Between:

1 Katragadda Krishna, S/o. Late Seethanna,
R/o. Madduru Village, Kovvur Mandal,
West Godavari District.

2 Katragadda Rama Rao, S/o. Late Seethanna,
R/o. Madduru Village, Kovvur Mandal,
West Godavari District.

..... PETITIONERS

AND

1 Deputy Commissioner of Endowments, Kakinada,
East Godavari District.

2 Sri sitarama Swamy Temple, Rep. by its Executive Officer,
Maddur Village, Kovvur Mandal, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Prohibition to prohibit the 1st respondent to proceed with the case in O.A.No.53 of 2004 against the petitioners as barred by principles of res judicata.

Counsel for the Petitioners: MR.P.R.K.AMERANDRA KUMAR

Counsel for the Respondent No.1: GP FOR ENDOWMENTS

Counsel for the Respondent No.2: SMT.N.INDRANI

The Court made the following :

ORDER:

This writ petition is filed seeking a writ of Prohibition to prohibit the 1st respondent-Deputy Commissioner of Endowments, Kakinada, East Godavari District, from proceeding with the case in O.A.No.53 of 2004 pending on his file.

The petitioners claim to be the owners and possessors of Ac.3.48 cents of land situated in R.S.No.174/5 of Madduru village, Kovvur Mandal, West Godavari District. It is stated that the 2nd respondent-Sri Sitarama Swamy Temple, represented by its Executive Officer, Maddur village, filed O.S.No.200 of 1989 on the file of Subordinate Judge, Kovvur seeking a decree for declaration of title and recovery of possession in respect of the property in occupation of the petitioners. However, the plaint was rejected on 08-06-1993 for non-payment of Court fees and the suit was dismissed and the said order has become final. Thereafter, the 2nd respondent filed O.A.No.53 of 2004 on the file of the 1st respondent under Section 83 (2) of The A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') in which the petitioners are served with a notice dated 30-08-2004 calling upon them to appear before the 1st respondent on 28-09-2004. The said proceedings are questioned in this writ petition seeking a Writ of Prohibition restraining the 1st respondent from proceeding further in O.A.No.53 of 2004.

The only contention raised by the petitioners is that the 2nd respondent having filed a civil suit which ended in dismissal, is not entitled to invoke the remedy under the Endowments Act and therefore the proceedings in O.A.No.53 of 2004 are not maintainable. Thus, a Writ of Prohibition is sought prohibiting the 1st respondent

from proceeding further in O.A.No.53 of 2004.

The law is well settled that a writ of Prohibition can be issued only where a case is made out as to the patent lack of jurisdiction. This is a case where the petitioners are challenging the proceedings before the 1st respondent on the ground that the 2nd respondent is not entitled to invoke the provisions of the Act since a civil suit filed for the same relief was already dismissed. If that be so, it is always open to the petitioners to contest O.A.No.53 of 2004 by filing appropriate counter raising all objections as available under law including the maintainability of the proceedings. Since it cannot be said that the 1st respondent has usurped the jurisdiction with which he is not legally vested, no Writ of Prohibition as prayed for can be issued.

Accordingly, without expressing any opinion on merits, granting leave and liberty to the petitioners to raise all the grounds before the 1st respondent, the writ petition is disposed of. No costs.

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21-09-2004

Note: Issue C.C in two days.

B/o.

vs

To

1 Deputy Commissioner of Endowments, Kakinada,
East Godavari District.
2 Sri sitarama Swamy Temple, Rep. by its Executive Officer,
Maddur Village, Kovvur Mandal, West Godavari District.
3 Two CCs to the G.P for Endowments, High Court Buildings,
Hyderabad(O.U.T).
4 Two CD copies.